pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
VERNON ROBBINS,	:	
Requester	:	
	:	
v.	:	**Docket No: AP 2026-3726**
	:	
POTTSTOWN BOROUGH	:	
POLICE DEPARTMENT,	:	
Respondent	:	

FACTUAL BACKGROUND

On August 13, 2026,[1] Vernon Robbins, ("Requester"), an inmate at SCI-Coal Township, submitted a request ("Request") to the Pottstown Borough Police Department ("Department") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., seeking:

> Confidential Informant payroll financial records (state and/or federal) of the various local, state and federal police agencies for the following confidential informants: Anthony Rivera Seda, Sr., Kip David Williams, Delmar James Culbreath/Carter, Melvin Lee Ross, Jr., Andre Lamar Lacey, and Larry Steven Charles, all of whom were the prosecution's witnesses in Com. v. Robbins (CP-46-CR00001350-2005).

As the Requester did not receive the Department's response within five business days of the Request, the Requester filed an appeal with the Office of Open Records ("OOR") on September

[1] The Request was sent via certified mail on August 9, 2026, and received by the Department on August 13, 2026. *See* Appeal.

8, 2026,[2] claiming that the Request was deemed denied. *See* 65 P.S. § 67.901.[3] The OOR invited both parties to supplement the record and directed the Department to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On September 30, 2026,[4] the Department submitted a position statement, asserting that any responsive records would jeopardize public safety or law enforcement activities and would include the identity of a confidential informant, which is expressly exempt pursuant to the RTKL. 65 P.S. §§ 67.708(b)(2); (b)(16)(iii).[5] In support of its position, the Department submitted the attestation made under penalty of perjury[6] authored by Zachary Nelson ("Nelson Attestation"), the Department's Agency Open Records Officer ("AORO").

LEGAL ANALYSIS

The Department is a local agency subject to the RTKL. 65 P.S. § 67.302. Records in the possession of a local agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. As an agency subject to the RTKL, the Department is required to demonstrate, "by a preponderance of the evidence," that records are exempt from public access. 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as "such proof as leads the fact-finder … to find that the existence of a contested

[2] While the OOR received the appeal on September 8, 2026, the envelope containing the appeal is postmarked by SCI-Coal Township on August 28, 2026. Under the "prisoner mailbox rule," a document is deemed filed on the date the prisoner delivers it to prison authorities for mailing. *Commonwealth v. Jones*, 549 Pa. 58, 700 A.2d 423, 426 (Pa. 1997).
[3] The Requester granted the OOR a 30-day extension to issue a final determination. *See* 65 P.S. § 67.1101(b)(1) ("Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).").
[4] The Department requested an extension to submit a position statement and supporting evidence which was granted. *See* 65 P.S. § 67.1102(b)(3)("In the absence of a regulation, policy, or procedure…the appeals officer shall rule on procedural matters on the basis of justice, fairness, and the expeditious resolution of the dispute").
[5] The Borough also asserts that the Department is prohibited from disseminating the requested records pursuant to 18 Pa.C.S. § 9158.3. However, that provision is found in Subchapter F.1 of the Criminal History Record Information Act and is titled "Crime Victim Right of Access." As there is nothing in the record to demonstrate that the Requester was a crime victim in connection with the subject matter of the Request, this provision would not apply.
[6] 18 Pa. C.S. § 4904.

fact is more probable than its nonexistence." *Pa. State Troopers Ass'n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep't of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

1. The Department failed to prove records are exempt under Section 708(b)(2) of the RTKL

The Department argues that any responsive records identifying are exempt from disclosure under Section 708(b)(2) of the RTKL because the release of the records would be reasonably likely to jeopardize public safety or public protection. 65 P.S. § 67.708(b)(2).

Section 708(b)(2) of the RTKL exempts from disclosure "[a] record maintained by an agency in connection with ... law enforcement or other public safety activity that if disclosed would be reasonably likely to jeopardize or threaten public safety ... or public protection activity." 65 P.S. § 67.708(b)(2). In order to withhold records under Section 708(b)(2) of the RTKL, the Department must show: (1) the record at issue relates to law enforcement or public safety activity; and (2) disclosure of the record would be reasonably likely to threaten public safety or a public protection activity. *Carey v. Pa. Dep't of Corr.*, 61 A.3d 367, 374-75 (Pa. Commw. Ct. 2013).

In order to show a reasonable likelihood, "[a]n agency must offer more than speculation or conjecture to establish the security-related exceptions under the [RTKL]." *California Borough v. Rothey*, 185 A.3d 456, 468 (Pa. Commw. Ct. 2018). However, the OOR has also found the professional opinion of experts assessing the risks of security to be credible and will not substitute its judgment for that of those with far more familiarity with such issues. See Ocasio v. Pa. Dep't of Corre., 183 A.3d 506, 2018 Pa. Commw. LEXIS 18 (Pa. Commw. Ct. 2018).

Under the RTKL, a sworn affidavit or statement made under the penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011). However, conclusory statements are insufficient to meet an agency's

burden of proof under the RTKL. *See Office of the Governor v. Scolforo*, 65 A.3d 1095, 1130 (Pa. Commw. Ct. 2013) ("[A] generic determination or conclusory statements are not sufficient to justify the exemption of public records"); *Pa. Dep't of Educ. v. Bagwell*, 131 A.3d 638, 659 (Pa. Commw Ct. 2016) ("Affidavits that are conclusory or merely parrot the exemption do not suffice"). To determine the adequacy of an affidavit, the Commonwealth Court considered whether it: (1) includes detailed information describing the nature of the records sought; (2) connects the nature of the various records to the reasonable likelihood that disclosing them would threaten public safety in the manner described; (3) shows that such disclosure would impair the agency's ability to perform the public safety functions. *Allegheny Cnty. Dist. Attorney's Office v. Wereschagin*, 257 A.3d 1280, 1298 (Commw. Ct. 2021).

In support of the Department's position, AORO Nelson indicates that any records sought by this Request would reasonably be expected to endanger the person identified as a confidential source and otherwise threaten public safety. Nelson Attestation ¶ 9. Release of such records could also reasonably be expected to adversely affect an investigation or ongoing prosecution, including by revealing the existence, nature, scope or methods of law enforcement activity. *Id.* ¶ 10. AORO Nelson attests that responsive records, if they exist, could reasonably be expected to jeopardize public safety, endanger persons, adversely affect investigations or prosecutions, or otherwise compromise law enforcement activities. *Id.* ¶ 16.

The attestation provided by the Department is authored by the AORO, who does not set forth specific expertise or qualifications of the attestor with respect to security matters. Further, the Nelson Attestation fails to establish that disclosure of any responsive records would be reasonably likely to result in a demonstrable risk to public safety. *See* 65 P.S. 67.708(b)(2). As noted above, to establish security-related exemptions under the RTKL, an agency must prove that

the risk is more than mere speculation; it must be substantial, demonstrable and real or apparent. *See Rothey*, 185 A.3d at 468; *see also Mission Pa. LLC v. McKelvey*, 212 A.3d 119 (Pa. Commw. Ct. 2019). The Department's conclusory evidence does not establish a link between the potential disclosure of confidential informants and any real and apparent harm to the public at large. The ambiguous claim of nonspecific general threats falls short of establishing the required elements of the Section 708(b)(2) of the RTKL.

2. The Department proved records may relate to a criminal investigation

The Department asserts that any responsive records to this Request would not be subject to public access in their entirety because they consist of criminal investigative records that would contain the identity of a confidential source. 65 P.S. § 67.708(b)(16)(iii). The OOR does not have jurisdiction to hear appeals related to criminal investigative records held by local law enforcement agencies. *See* 65 P.S. § 67.503(d)(2). Instead, such appeals are to be heard by an appeals officer designated by the local district attorney. *See id*.

In the instant matter, the Request seeks, on its face, records in relation to a criminal matter identified as "Com. v. Robbins (CP-46-CR00001350-2005)". *See Pa. Game Comm'n v. Fennell*, 149 A.3d 101 (Pa. Commw. Ct. 2016) (holding that the OOR must consider uncontradicted statements in the appeal filing when construing exemptions); *Office of the Governor v. Davis*, 122 A.3d 1185, 1192 (Pa. Commw. Ct. 2015) (*en banc*) (holding that an affidavit may be unnecessary when an exemption is clear from the face of the record). Any responsive records could relate to law enforcement activity and the use of confidential informants. 65 P.S. § 67.708(b)(16)(iii).

Accordingly, the appeal is hereby transferred to the Appeals Officer for the Montgomery County District Attorney's Office to determine whether the records are subject to access. A copy

of this final order and the appeal filed by the Requester will be sent to the Appeals Officer for the Somerset County District Attorney's Office.[7]

CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **transferred in part**, and the Department is not required to take any further action at this time. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Montgomery County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules as per 65 P.S. § 67.1303, but as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.[8] All documents or communications following the issuance of this Final Determination shall be sent to oor-postfd@pa.gov. This Final Determination shall be placed on the OOR website at: http://openrecords.pa.gov.

FINAL DETERMINATION ISSUED AND MAILED: November 3, 2026

/s/ Julie Sodl

APPEALS OFFICER
JULIE SODL

Sent via E-File Portal to: Michael Markovich
Hannah E. Posencheg, Esq.

Sent via U.S. Mail to: Vernon Robbins, GK8880
Montgomery County District Attorney's Office Appeals Officer

[7] The Commonwealth Court has noted that the OOR has the authority to transfer an appeal to "where [a requester] should have initially appealed." *See Phila. Dist. Attorney's Office v. Williams*, 204 A.3d 1062, *4 n.5 (Pa. Commw. Ct. 2019) ("... [A]lthough the onus for appealing from an RTKL denial to the proper appeals officer is on the requester, the OOR did not violate the law or any procedure in redirecting the appeal in this case").
[8] *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).